

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 613

Introduced by Bourne, 8; Synowiecki, 7

Read first time January 21, 2003

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to court procedures; to provide for
- 2 confidential communications in cases of domestic violence
- 3 and sexual assault as prescribed.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that because of the
2 fear and stigma that often results from crimes of sexual assault or
3 domestic violence, and because of the risk of retaliatory violence
4 by the perpetrator, many victims hesitate to seek help even when it
5 is available at no cost to them. Without assurances that
6 communications made while receiving assistance in overcoming the
7 adverse effects of a sexual assault or domestic violence situation
8 will be confidential and protected from disclosure, victims will be
9 even more reluctant to seek assistance or to confide openly to
10 their advocates and to explore legal and social remedies fully. As
11 a result, victims may fail to receive needed vital care and
12 counseling and thus lack the support, resources, and information
13 necessary to recover from the crime, to report the crime, to assist
14 in the prosecution of the crime, to participate effectively in the
15 justice system, to achieve legal protections, and to prevent future
16 sexual assaults and domestic violence. This is a matter of
17 statewide concern, and the prevention of violence is for the
18 protection of the health, safety, and welfare of the public.

19 Sec. 2. For purposes of sections 1 to 4 of this act:

20 (1) Advocate means any employee or supervised volunteer
21 of a domestic violence and sexual assault victim assistance program
22 or of any other agency, business, or organization that is not
23 affiliated with a law enforcement or prosecutor's office, whose
24 primary purpose is assisting domestic violence and sexual assault
25 victims, and who has completed at least twenty hours of training
26 provided by the program for which the person is working or
27 volunteering or by the Nebraska Domestic Violence and Sexual
28 Assault Coalition. The training shall include, but not be limited

1 to, the dynamics of victimization, substantive laws relating to
2 violent crime, sexual assault, and domestic violence, crisis
3 intervention techniques, communication skills, working with diverse
4 populations, an overview of the state criminal justice system,
5 information regarding pertinent hospital procedures, and
6 information regarding state and community resources for victims of
7 crime;

8 (2) Victim means a person who communicates with an
9 advocate for assistance in overcoming the adverse effects of
10 domestic violence or sexual assault; and

11 (3) Confidential communication means any written or
12 spoken information exchanged between a victim and an advocate in
13 private or in the presence of a third party who is necessary to
14 facilitate communication or further the advocacy process and which
15 is disclosed to the advocate for the purposes of overcoming the
16 adverse effects of domestic violence or sexual assault.

17 Sec. 3. (1) A victim, an advocate without the consent of
18 the victim, a third party as described in subdivision (3) of
19 section 2 of this act without the consent of the victim, or a minor
20 or incapacitated victim without the consent of a custodial guardian
21 or a guardian ad litem appointed upon application of either party,
22 shall not be compelled to give testimony or to produce records
23 concerning a confidential communication for any purpose in any
24 criminal, civil, legislative, administrative, or other proceeding,
25 except as follows:

26 (a) The party seeking disclosure of a confidential
27 communication shall file a motion that sets forth specifically the
28 issues on which disclosure is sought and enumerates the reasons why

1 the party is seeking disclosure and why disclosure is necessary,
2 accompanied by an affidavit or affidavits containing specific
3 information which establishes that the confidential communication
4 constitutes relevant and material evidence in the case; and

5 (b) If the party seeking disclosure has complied with
6 subdivision (a) of this subsection, the court or a hearing officer
7 shall review the confidential communication in camera and out of
8 the presence and hearing of all persons, except the victim, the
9 advocate, and any other person the victim is willing to have
10 present, to determine whether a failure to disclose the
11 confidential communication would violate the constitutional rights
12 of the party seeking disclosure.

13 (2) An advocate or a victim cannot be compelled to
14 provide testimony in any criminal, civil, legislative,
15 administrative, or other proceeding that would identify the name,
16 address, location, or telephone number of a safe house, abuse
17 shelter, or other facility that provided temporary emergency
18 shelter to the victim of the offense that is the subject of the
19 proceeding unless the facility is a party to the proceeding.

20 Sec. 4. (1) A victim does not waive the protections
21 afforded by sections 1 to 4 of this act by testifying in court
22 about the offense, except that:

23 (a) If the victim partially discloses the contents of a
24 confidential communication in the course of testifying, then either
25 party may request the court to rule that justice requires the
26 protections sections 1 to 4 of this act be waived to the extent the
27 protections apply to that portion of the confidential
28 communication; and

1 (b) Any waiver shall apply only to the extent necessary
2 to require any witness to respond to counsel's questions concerning
3 a confidential communication that is relevant to the case.

4 (2) An advocate cannot waive the protections afforded a
5 victim under sections 1 to 4 of this act. However, if a victim
6 brings suit against an advocate or the agency, business, or
7 organization in which the advocate was employed or served as a
8 volunteer at the time of the advocacy relationship, the advocate
9 may testify or produce records regarding confidential
10 communications with the victim and is not in violation of sections
11 1 to 4 of this act.

12 (3) Sections 1 to 4 of this act shall not relieve an
13 advocate of any duty to report suspected adult abuse or neglect as
14 required by section 28-372, suspected child abuse or neglect as
15 required by section 28-711, or any other legal duty to report a
16 criminal or unlawful act.

17 (4) Sections 1 to 4 of this act shall not be construed to
18 limit any other testimonial privilege available to any person under
19 the laws of this state.